

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRR-3885-2012**

**Date of decision :23.08.2017**

Ram Parkash

..... Petitioner

Versus

Ishwar and others

..... Respondents

**CORAM : HON'BLE MR.JUSTICE H.S. MADAAN**

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Present : Mr. Pankaj Jain, Advocate  
for the petitioner.

Mr. Tapan Yadav, Advocate  
for respondents No.1 to 3.

Mr. Neeraj Poswal, AAG, Haryana.

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**H.S. MADAAN, J. (Oral)**

Accused – Ishwar, his son Dilbagh along with one Sandeep were tried by Dr. Ashok Kumar, Judicial Magistrate Ist Class, Gurgaon in FIR No.376 dated 21.06.2003 for offences under Sections 148, 149, 323, 427, 325 and 506 of the Indian Penal Code (“IPC” - for short) registered at Police Station, City Gurgaon. Vide judgment of conviction dated 27.07.2011 and order of sentence dated 28.07.2011, accused – Sandeep was acquitted and accused – Ishwar was held guilty for commission of offences

under Section 323 IPC whereas accused – Dilbagh Singh was held guilty for commission of offence under Section 325 IPC. Thereafter, accused – Ishwar and Dilbagh were released on probation of good conduct.

Briefly stated the facts of the case as per prosecution version are that on 21.06.2003 at about 10:30 a.m. Ishwar along with his sons Bablu and Dilbagh, his wife Shakuntla, Pinki and Sudesh wives of sons of Ishwar accompanied by 5/7 more persons came to plot of Ram Parkash and dismantled the boundary wall. When Smt. Raj Bala wife of complainant reached the spot then all the assailants armed with iron rods attacked the complainant, resultantly, he suffered severe injuries at their hands. Smt. Raj Bala was also caused injuries. In the meanwhile, one Naresh son of Kishan Chand reached to the spot and rescued them from the clutches of the accused.

Formal FIR in the case was registered. Investigation was carried out, accused were arrested during investigation. On completion of investigation and other formalities, challan against the accused were presented.

On presentation of challan and after necessary formalities, formal charge was framed against the accused. The trial began and after examining several prosecution witnesses it stood concluded. Statements of accused under Section 313 Cr.P.C. were recorded.

After hearing arguments accused - Sandeep was acquitted whereas accused – Ishwar and Dilbagh were convicted. However, they were granted benefit of probation.

Feeling aggrieved the complainant challenged that order by way of filing criminal appeal, however, he was unsuccessful and vide judgment dated 01.08.2012 the appeal was dismissed.

Again the complainant has approached this Court by way of filing criminal revision petition. The criminal revision petition has not been filed within time and it is beyond period of limitation by 32 days. The reasoning given is that in the month of October and November 2012, the petitioner got seriously ill because of heavy workload and could not make effort to file the present petition.

Notice of the application was given to the respondent.

The State has filed reply to the application praying for its dismissal.

I have heard learned counsel for the parties, besides, going through the record.

Admittedly the revision petition has been filed beyond the period of limitation. Section 3 of the Limitation Act, 1963 deals with power of limitation providing that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed.

In this case, the petitioner has failed to render any reasonable, plausible or satisfactory explanation for condonation of delay in filing the criminal revision petition. Although according to the petitioner, he had become seriously ill because of heavy workload and could not make effort to file petition. However, no record regarding his illness has been proved on file. It seems that this plea has been taken just to cross the barrier of

limitation, but the same has been unable to do so. Therefore, on point of limitation the petition deserves to be dismissed.

On merits also, the petitioner does not have any case. Section 360 Cr.P.C. deals with grant of probation, which is as follows:-

*“360. Order to release on probation of good conduct or after admonition.*

*(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially*

*empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub- section (2).*

*(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.*

*(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860 ), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to*

*any punishment, release him after due admonition.*

*(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.*

*(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.*

*(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.*

*(7) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.*

*(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to*

*observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.*

*(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.*

*(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958 ), or the Children Act, 1960 (60 of 1960 ), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”*

If case of the accused-convicts is examined, then it is found to be covered by four corners of this provision, as no previous conviction against any of the accused-convict is alleged or proved. There is nothing to show that they are hardened criminals. It comes out that the incident had taken place on the spur of the moment without any pre-planning. The trend of modern penology is towards reform, rather than retribution. The criminals are treated like patients and their rehabilitation in the society is tried for. Admittedly, the accused-convicts have completed the period of probation without giving any reason for complaint and have not indulged in any criminal act during that period or till date.

Under the circumstances the trial Court was justified in

releasing the accused - Ishwar and Dilbagh on probation and no fault can be found against such action of the trial Court in granting benefit of probation to the accused - convicts. The first appellate Court had upheld the said judgment passed by the trial Court. I on my part do not see any reason to withdraw the benefit of probation to accused - convicts and send them behind bars to undergo sentence. The period of probation has already elapsed. I do not find any illegality or infirmity much less apparent on face of it qua the judgment passed by Judicial Magistrate Ist Class Gurgaon and the first Appellate Court. Therefore, the criminal revision petition is dismissed being without merit.

**23.08.2017***Gaurav Sorot*

**( H.S. MADAAN )  
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**